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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

v.

CRIMINAL ACTION
NO. 04-80370-15

HOUDA MOHAMAD BERRO

Defendant.

SENTENCING HEARING
BEFORE THE HONORABLE JOHN CORBETT O'MEARA
United States District Judge
Ann Arbor U.S. Courthouse & Federal Building
200 East Liberty Street
Ann Arbor, Michigan
Tuesday, December 12, 2006

APPEARANCES:

BARBARA L. McQUADE
JULIE A. BECK
United States Department of Justice
United States Attorney's Office
211 West Fort Street-21st Floor
Detroit, Michigan 48226
(313)226-9100
Email: barbara.mcquade@usdoj.gov
julie.beck@usdoj.gov
On behalf of the Government.

SALEM F. SAMAN
150 North Main Street
Plymouth, Michigan 48170
(734)459-4040
Email: sfsamaan@sbcglobal.net
On behalf of Defendant.

TO OBTAIN CERTIFIED TRANSCRIPT:
Andrea E. Wabeke, CSR, RMR, CRR
Official Court Reporter
734.741.2106

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(None Offered)

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1 Ann Arbor, Michigan

2 December 12, 2006

3 10:53 a.m.

4 - - -

5 THE CLERK: The Court calls United States of
6 America versus Houda Berro.

7 MS. McQUADE: Good morning, your Honor.
8 Barbara McQuade on behalf of the United States.

9 MS. BECK: And Julie Beck on behalf the
10 United States. Good morning.

11 MR. SAMAN: Good morning, your Honor. For
12 the record, Salem Samaan, appearing on behalf of Houda
13 Mohamad Berro, who is approaching the podium.

14 THE COURT: Good morning, Mr. Samaan. And
15 Miss Berro is standing next to you at the lectern.
16 You said that. We're here, as the parties know, this
17 morning at the time and place set for the sentencing
18 of Miss Berro, who appeared before this Court on
19 August 9th of year, and at that time tendered a plea
20 of guilty to Count 52 of the second superceding
21 indictment. There was a Rule 11 Plea Agreement. The
22 guilty plea was accepted. The Rule 11 Plea Agreement
23 was taken under advisement.

24 The Court asks you on this day in December,
25 Miss Berro, if you still ask the Court to accept your

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1 plea of guilty?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Is that your request as well,
4 Mr. Samaan?

5 MR. SAMAAN: Yes, your Honor.

6 THE COURT: And Miss McQuade?

7 MS. McQUADE: Yes, your Honor.

8 THE COURT: The Court at this time does
9 accept the Rule 11 Plea Agreement.

10 Any reason the Defendant should not be
11 sentenced this morning known to you, Mr. Samaan?

12 MR. SAMAAN: No, your Honor.

13 THE COURT: Do you know of any,
14 Miss McQuade?

15 MS. McQUADE: No, your Honor.

16 THE COURT: And Miss Berro, do you
17 understand what I'm saying is do you know of any
18 reason you shouldn't be sentenced today, do you?

19 THE DEFENDANT: No.

20 THE COURT: Are there any unresolved
21 objections to the presentence investigation report
22 from the point of view of the Defendant?

23 MR. SAMAAN: No, your Honor.

24 THE COURT: From the point of view of the
25 Government?

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1 MS. McQUADE: No, your Honor.

2 THE COURT: And Miss Berro, what Mr. Samaan
3 has said as your counsel as your lawyer has said, is
4 that the presentence investigation report, which you
5 went over with him, right?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: It doesn't have anything in it
8 which is material, that's important and wrong and in
9 error, and isn't missing anything that's material and
10 important; do you agree with that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: That was a yes? All right.
13 It's time for allocution. Mr. Samaan?

14 MR. SAMAAAN: Yes, your Honor, if I may.
15 Thank you. Your Honor, the facts that led to the
16 charges filed against Miss Berro date back to when the
17 initial indictment was first brought against the
18 initial defendants. At that time, Miss Berro was not
19 charged.

20 And at that time there was an offer made by
21 the Government that if Mr. Abdul Halim Berro, who was
22 just sentenced before you today, who is the father of
23 her children, if he was to plead guilty and accept an
24 offer of plea of guilty by the Government, that in
25 fact no charges would be brought against Miss Berro.

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1 A similar offer was made even after Houda
2 Berro was charged, and that is if Mr. Berro would
3 plead guilty, Halim Berro that is, that the Government
4 would consider diversion on behalf of Miss Berro. And
5 at that time, there was no acceptance of plea of
6 guilty by Mr. Berro.

7 However, since then, the Government's
8 objective have been met. Every one of defendants has
9 in fact plead guilty. Nothing has happened from the
10 time the Government reviewed the facts that led to the
11 charges being brought against Houda Berro till today
12 to change the reasons.

13 Now, the Government is standing before this
14 Court, as set forth in their memorandum, asking the
15 Court to in fact go along with the guidelines, which
16 were 12 to 18 months in fact incarcerating Miss Berro.

17 THE COURT: Mr. Samaan, as you probably
18 know, it would be a rare week that goes by this Court
19 and other judges of this Court aren't confronted by
20 situations where defendants appearing before them have
21 been offered something better than what they're going
22 to get. That's the plea bargaining process. And the
23 Court -- there has been a court or two in the country
24 have spoken up about that, as maybe not the nearest
25 thing to free will, but in any event it is legal and

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1 it is part of the law enforcement process, and I'm not
2 going to draw any conclusions negative to the
3 Government based on that.

4 MR. SAMAN: Your Honor, that was not my
5 intent, that the Court would draw negative
6 conclusions. However, what we're saying is that the
7 Government at that time didn't believe that Houda
8 Berro was this big of a criminal or has done something
9 so wrong that would require her to go to jail. And
10 now, same facts, same situation, they're argue in the
11 memorandum that she should in fact go to jail.

12 And one of the issues that they raise in
13 their memorandum that I need to speak on, Judge, is
14 these allegations of marriage fraud. This issue was
15 taken up by the Court in a motion that was brought
16 sometime back, and at that time the Court, even though
17 it did not rule on it, said that it believes that it's
18 not going to allow that to come in, however, at the
19 time of trial, we can revisit the issue with respect
20 to allegations of marriage fraud.

21 Your Honor, there's nothing that would show
22 that Miss Berro was ever involved in marriage fraud.
23 She did get married to Robert Berro? Yes. Did she
24 file a petition to adjust the immigration status?
25 Yes. Did she divorce him? Yes. There's nothing

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1 illegal about what she did. No charges have ever been
2 brought against Miss Berro alleging that she's
3 involved in marriage fraud.

4 The Government says that based on --

5 THE COURT: We're here today on bank fraud
6 charges, not marriage fraud charges, which the motion
7 was before the Court I believe with regard to
8 suppressing something at trial if the matter went to
9 trial. It didn't go to trial.

10 MR. SAMAN: No, that's correct.

11 THE COURT: And we're talking about bank
12 fraud here.

13 MR. SAMAN: That's correct. Thank you,
14 your Honor. Your Honor, by way of background, Houda
15 Berro is a 28 year old lady, mother of two children --
16 a single mother of two children. She has worked hard
17 all her life trying to support those children. She
18 has held odd jobs. She's baby sat at the house.
19 She's also did some sewing for people at her house.
20 She's worked at gas stations. Presently, she's
21 working at a pharmacy. All this to make sure she
22 takes care of those two children that she has at home.
23 She's the sole caretaker of these children.

24 The record would reflect that she has never
25 broken the law prior to this incident. Miss Berro, at

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1 the time the charges were filed, was in Lebanon. She
2 came back to this country to stand before this Court
3 and answer those charges against her. Now, she didn't
4 have to come back. There's no extradition from
5 Lebanon. She was there, and as the Government states,
6 she has family there. She could have fled. If she
7 wanted to flee, she wouldn't have come back to begin
8 with. She came back. She wanted to stand before this
9 Court and answer the charges.

10 Did she make a mistake? Absolutely. And
11 she will tell that to the Court, and she did tell it
12 to the Court at the time she entered her plea. She
13 lied on her application for mortgage when she was
14 trying to purchase a home for her kids. She allowed
15 Halim Berro to make payments on that mortgage, again,
16 with the understanding believing that he's doing it to
17 help secure a home for the children.

18 When the mortgage was paid off, she filed
19 for a new mortgage, refinanced, again, at the behest
20 of Abdul Halim, with the understanding that he's going
21 to use that money to open up a business, again, to
22 help these children.

23 Judge, it's worthy to note that the \$124,000
24 mortgage refinance that was taken out by Houda Berro,
25 has been paid in full as we stand before this Court

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1 today, with the last payment I believe of 1,000 and
2 something being paid, what, in the last month. She
3 has paid every penny she's took out.

4 She did not gain anything from the actions
5 or from lying on her application. She took
6 responsibility for it. She did not file bankruptcy.
7 She didn't walk away from it. She didn't run from it.
8 She stood before this Court and answered to it and
9 accepted her responsibility and paid every penny back.

10 All she ever wanted to do was to make sure
11 that her children's lives and future was secure. As
12 the letters that we set forth attached to our
13 memorandum, Judge, clearly reflect the type of person
14 that Houda is, a caring person, a loving person, a
15 woman that her whole life revolves around her
16 children. She also helps other people. The one lady
17 that wrote on her behalf said that she was like a
18 mother, a sister that she didn't have her. She spent
19 all night with her one night at the hospital when she
20 had her first baby. It was Houda that helped her get
21 through those moments and helped to show her how to
22 care for that baby.

23 You heard from the father, who he teaches
24 religion at a mosque, and he says he raised his
25 children to be good citizens, to abide by the law, to

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1 live within the boundaries of the law, and Houda has,
2 with the exception of this, done that. And she will
3 tell you at the time, she didn't really believe she
4 was doing something wrong, although she does know now
5 when she lied on her application.

6 But to her benefit, she did stand behind it
7 and she paid back every penny she took out. She did
8 not gain anything. And as a fact, your Honor, she has
9 also as part of the agreement agreed to forfeit the
10 home that her children live in.

11 Your Honor, I believe, and we've set forth
12 many reasons in our petition, that a sentence of
13 probation on behalf of Miss Berro would be a just and
14 proper sentence. To take her away from her children
15 would be devastating, not just for her, but for the
16 kids. She has learned from her mistake. The mere
17 thought of being taken away from the kids, a thought
18 that she has lived with from the day she was charged
19 until today, has caused her more stress and anxiety.
20 And I believe that in and of itself is sufficient
21 deterrence for her, who but for this, has led a very
22 law abiding life, that a sentence of incarceration is
23 not going to do anymore than she has already suffered.
24 Thank you, your Honor.

25 THE COURT: Thank you, Mr. Samaan. And

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1 Miss Berro, you too may address the Court. If you
2 choose to do so, now is the time.

3 THE DEFENDANT: Yes, your Honor. I just
4 want to say I know that what did I was a mistake, but
5 that was a fact of ignorance of the law. And I'm very
6 sorry about that. I learned a big lesson from this, a
7 very big lesson. I been -- I been under stress, on
8 medication. I was under tether almost a year. It was
9 very hard for me and painful to go through all this
10 and I'm very sorry. I know I did a mistake, but I
11 learned a very big lesson for it, and I learned to ask
12 what's right and what's wrong, what's with the law and
13 what's against the law. And I just want to ask you
14 for one thing, with all my heart, for you -- I'm
15 sorry, for your forgiveness.

16 THE COURT: Take your time.

17 THE DEFENDANT: I'm shaking, I'm sorry. For
18 mercy because of my kids. They're everything to me.
19 They're my life. They don't have anyone except me.
20 Please don't take me away from them. Don't break
21 their heart, please. And God bless you and your
22 family, and thank you for listening.

23 THE COURT: Thank you, Miss Berro. For the
24 Government, Miss McQuade.

25 MS. McQUADE: Yes, your Honor. I won't

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1 belabor the issues we covered in the Government's
2 sentencing memorandum. Has Court had an opportunity
3 to read that memorandum?

4 THE COURT: Yes, I have.

5 MS. McQUADE: I just want to highlight a
6 couple of points then that are made in the memorandum.
7 First, your Honor, in calculating the sentencing
8 guidelines range of 12 to 18 months, only the fraud
9 from the two mortgage frauds that Ms. Berro was
10 directly involved in, those two mortgage frauds on the
11 Orchard property, were used to calculate the fraud
12 amount.

13 And then from that fraud amount, Ms. Berro
14 was given a four level reduction in her offense level
15 for her role in the offense, because of the relative
16 culpability between her and Abdul Halim Berro. So
17 based on those factors, it's the Government's position
18 that a guideline range of 12 to 18 months is a
19 reasonable sentence, in light of all of the other
20 factors under 3553(a).

21 THE COURT: Thank you, Miss McQuade. The
22 Court finds that the facts set out in the presentence
23 report and used in the calculation of the offense
24 level and the criminal history category are accurate,
25 and that the calculation itself of the sentencing

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1 guideline range is accurate. It does produce --
2 calculation produces an offense level of 13 and a
3 criminal history category of I.

4 And Miss Berro, I've reviewed your file, the
5 presentence report, the Rule 11 Plea Agreement, and I
6 have considered all of this and what you have said so
7 persuasively, as well what Mr. Samaan said so
8 persuasively in light of Title 18 U.S. Code 3553(a).
9 I've also considered the fact that we have a large
10 number of defendants, and one of the things that
11 3553(a) tells me to consider is proportionality, or
12 the problem of disparity, if there is disparity, when
13 there is substantial number of people involved in the
14 same criminal activity.

15 And believe me when I say that I believe you
16 when you talk about your concern for your children,
17 and I wish that the powers given to me were such that
18 I could arrange to give you a sentence of
19 incarceration and still let you care for your
20 children, but I can't do that.

21 And pursuant to the Sentencing Reform Act of
22 1984, and considering 18 U.S.C. 3553(a), I place the
23 Defendant Houda Mohamad Berro in the custody of the
24 Bureau of Prisons for 12 months and one day.

25 The Court finds the Defendant does not have

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1 the ability to pay a fine, therefore all fines and
2 costs of incarceration and supervision are waived.
3 It's further ordered the Defendant shall pay the
4 United States the usual assessment required by statute
5 of \$100, and that's due immediately.

6 Mandatory drug testing is waived. Upon
7 release you'll be on supervised release for a term of
8 three years, and while on supervised release you'll
9 abide by the standard and special conditions adopted
10 by this district court. And due to the history of
11 suffering from depression, the following condition is
12 imposed:

13 If necessary, Defendant shall participate in
14 a mental health program as approved by the probation
15 department.

16 And let me, I think I know the answer, but I
17 ask Miss McQuade, if in the Rule 11 the Defendant has
18 waived appeal rights?

19 MS. McQUADE: She has, your Honor.

20 THE COURT: Well, you probably don't have
21 any appeal rights because they've been waived, but
22 there's something that you or a lawyer for you
23 discovers and believes warrants an appeal and you
24 can't afford a lawyer, I'll appoint one for you and
25 give that person whatever part of the record he or she

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1 needs in order to file and perfect an appeal. Any
2 claim of appeal must be filed within ten days of
3 today, with very few exceptions.

4 Miss Berro, has been free on bond.
5 Voluntary surrender?

6 MS. McQUADE: Yes, your Honor. No objection
7 to that.

8 THE COURT: So ordered. Anything further
9 the Government would like the record to reflect?

10 MS. McQUADE: Yes, your Honor. There is the
11 matter of forfeiture, which is part of the Rule 11
12 Plea Agreement to forfeit the Orchard property. And
13 Miss Beck would like to speak to that issue.

14 MS. BECK: Your Honor, on August 9th 2006,
15 I filed with the Court an application for entry of
16 preliminary order of forfeiture. I would ask that
17 that order be entered at this time. I would also note
18 that there is a related civil case in which the real
19 property is the defendant, and I have presented
20 Mr. Samaan and Miss Berro with a stipulated consent
21 judgment and final order of forfeiture, and we would
22 ask that that order be entered. We will tender that
23 to the Court and ask that this be entered as well to
24 resolve the civil case.

25 And I would also ask then that the

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1 forfeiture be made part of the judgment and commitment
2 order, either by attaching the preliminary order, or
3 I'd be happy to provide language from the order to the
4 case manager for inclusion in the J and C.

5 THE COURT: The preliminary order of
6 forfeiture, assuming I sign it and I'd like to look
7 through it briefly if I do, will by this order, by
8 this reference, become part of the judgment order.

9 MS. BECK: Thank you, your Honor.

10 THE COURT: Anything further, Miss Beck?

11 MS. BECK: No. Thank you.

12 THE COURT: Miss McQuade?

13 MS. McQUADE: No, your Honor. Thank you.

14 THE COURT: Mr. Samaan, do you have anything
15 further?

16 MR. SAMAAAN: Not myself, your Honor.
17 Although my ear is being burned by my client, if the
18 Court would like to give her a little time to speak.

19 THE COURT: I don't know what she wants to
20 say.

21 THE DEFENDANT: Please, your Honor, please.
22 The house is going. The father is going, and you're
23 going to take their mother, too. It's going to break
24 their heart. It's Christmas. I was planning -- I was
25 hoping for your mercy, for your forgiveness. I did

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1 something wrong but I paid the price.

2 THE COURT: I know.

3 THE DEFENDANT: Don't take me away today.

4 THE COURT: I know --

5 THE DEFENDANT: They're five years old.

6 THE COURT: I know --

7 THE DEFENDANT: How can you take me away 12
8 month from them?

9 THE COURT: I'm talking now, please. I know
10 and I am sympathetic, maybe more than I'm supposed to
11 be. I wish I knew how to solve this problem, but I
12 don't, and I've got to do my job. I hope you take
13 care of yourself.

14 THE DEFENDANT: How can I take care of my --

15 THE COURT: Stay away from depression if you
16 can, and get help --

17 THE DEFENDANT: This is going to kill my
18 kids.

19 THE COURT: -- if you have depression --

20 THE DEFENDANT: It's going to break their
21 heart.

22 THE COURT: -- and I hope that you stay
23 healthy in other ways. Stay in touch with your
24 family. Good luck to you.

25 MR. SAMAN: Thank you, your Honor.

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MS. McQUADE: Thank you, your Honor.

(Proceedings concluded 11:13 a.m.)

C E R T I F I C A T I O N

I, Andrea E. Wabeke, official court reporter for the United States District Court, Eastern District of Michigan, Southern Division, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a correct transcript of the proceedings in the above-entitled cause on the date hereinbefore set forth.

I do further certify that the foregoing transcript has been prepared by me or under my direction.


Andrea E. Wabeke
Official Court Reporter
RMR, CRR, CSR


Date